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Held at the Palais Wilson, Geneva, on Friday, 25 May 2018, at 10 a.m.

Chair: Mr. Ayat (Vice-Chair)

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In the absence of Ms. Janina, Mr. Ayat, Vice-Chair, took the Chair.

The meeting was called to order at 10.10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Albania (*continued*) (CED/C/ALB/1; CED/C/ALB/Q/1 and CED/C/ALB/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Albania took places at the Committee table.*

2. **Ms. Dralo** (Albania), replying to questions raised at the preceding meeting of the Committee, said that non-governmental human rights organizations had been invited to contribute to the process of drafting the initial report (CED/C/ALB/1), pursuant to Order of the Prime Minister No. 112 of 2014. Although there were no civil society organizations in Albania operating in the specific areas covered by the Convention, such organizations were generally well informed about the obligations arising from the ratification of the Convention, which had been published in the Official Gazette. The report had been adopted by a decision of the Council of Ministers and was available in Albanian on the website of the Official Publication Centre. The parliamentary committee that dealt with human rights played a key role in organizing public discussions on the implementation of the Convention with the participation of relevant stakeholders. In 2016, the Government had begun to develop a mechanism to monitor the implementation of recommendations issued by the human rights treaty bodies; the mechanism was expected to be operational later in 2018.

3. Regarding the status of the Convention in domestic legislation, article 4 of the Constitution provided that the Constitution was the highest law in Albania and that its provisions were directly applicable, except when the Constitution provided otherwise. Under article 5, Albania applied international law that was binding upon it; under article 122, any ratified international agreement constituted part of the internal legal system once it had been published in the Official Gazette and was directly applicable, except when it was not self-executing and its application required the adoption of implementing legislation. A duly ratified international agreement had priority over domestic laws that were incompatible with it. The norms issued by an international organization had priority, in case of conflict, over domestic law when the direct application of such norms was expressly contemplated in the agreement ratified by Albania. Consequently, the Convention was considered to be part of domestic law, but since not all of its provisions were self-executing, existing national laws would have to be amended and new ones adopted in order to give full effect to it. Article 1/a of the Criminal Code provided that the Code was based on the Constitution, the general principles of international criminal law and the international treaties ratified by Albania. The compatibility of domestic laws with the Convention had not been fully analysed prior to the latter's ratification. The involvement of all stakeholders was crucial for ensuring that an analysis was conducted and that the necessary steps were taken to harmonize domestic legislation with the Convention.

4. The extraordinary measures mentioned in paragraph 45 (b) of the initial report could be imposed in the event of a war, emergency or natural disaster, and lasted for as long as those conditions persisted. The extent to which human rights and freedoms could be restricted by such measures was defined by law. Any actions taken under extraordinary measures had to be proportionate to the degree of risk and had to be aimed at restoring the normal functioning of the State as soon as possible. Pursuant to article 15 of the Constitution, fundamental human rights and freedoms were indivisible, inalienable and inviolable, and formed the foundation of the entire juridical order. Article 16 provided that the fundamental rights and freedoms and the duties contemplated in the Constitution for Albanian citizens were also valid for foreigners and stateless persons in the territory of Albania, except in cases where the Constitution specifically attached the exercise of particular rights and freedoms to Albanian citizenship. Article 17 stipulated that limitations of the rights and freedoms provided for in the Constitution could be imposed only by law, in the public interest or for the protection of the rights of others. Limitations had to be proportionate to the situation that dictated them and could not infringe the essence of the rights and freedoms or exceed the limitations provided for in the European Convention on

Human Rights. Pursuant to article 27, no one could be deprived of liberty except in the cases listed in paragraph 2 thereof.

5. In Albania, there was no law on states of war or internal political instability that provided for or justified the violation of the rights of persons who were detained or arrested. In those situations, the legislation normally in force continued to apply. Article 4 (3) of Act No. 108/2015 on the State Police specified that the status of the police did not change in times of war, emergency or natural disaster. According to the Act, which set out measures designed to maintain public order and security, respect for human rights and fundamental freedoms was one of the basic principles underpinning police work. Article 230 of the Code of Criminal Procedure laid down special criteria for the issuance of orders for remand in custody, while article 230 of the Criminal Code stated that the commission of terrorist acts was punishable by no less than 15 years' imprisonment. According to domestic law, investigation procedures were the same for all criminal offences.

6. Article 74 of the Criminal Code provided that enforced disappearance, among other offences, was a crime against humanity punishable by no less than 15 years' imprisonment when it was committed according to a concrete premeditated plan or systematically against a civilian population for political, ideological, racial, ethnic or religious motives. The provision was in line with article 5 of the Convention and article 7 of the Rome Statute of the International Criminal Court.

7. Turning to article 3 of the Convention, she drew the Committee's attention to the information provided in paragraphs 53 and 54 (a) of the initial report. The responsibility of superiors for acts of enforced disappearance was addressed in article 109/c of the Criminal Code. Articles 248 ff. of the Code covered criminal acts against the State committed by public officials, including the arbitrary issuance of orders and the failure to take measures to stop an illegal activity. Subordinates were not required to execute an order that was contrary to the law. If a subordinate suspected that an order was unlawful, he or she was expected to notify a superior immediately and ask for the order to be given in writing. Each State body's procedures for issuing, transmitting and handling orders were defined in its regulations.

8. Under criminal legislation, enforced disappearance was treated as a continuous crime. Pursuant to article 66 (a) of the Criminal Code, the statute of limitations was calculated from the moment when the offence was committed until the moment when the accused was detained, and was 20 years in the case of the most serious crimes, including enforced disappearance. The maximum penalty for enforced disappearance without aggravating circumstances was 15 years' imprisonment. However, in accordance with article 7 (2) (b) of the Convention, article 109/c of the Criminal Code established aggravating circumstances, including the commission of the crime in respect of children, pregnant women or persons who were unable to protect themselves. When the crime resulted in the death of the disappeared person, it was punishable by no less than 30 years' imprisonment. Article 50 of the Criminal Code provided for aggravating circumstances that were applicable to all offences.

9. Between January 2017 and April 2018, training had been provided to 1,454 prison officials of various ranks. Numerous systematic and in-service programmes were offered. The subjects covered in the training curriculum included the obligations undertaken by Albania under international instruments and the European Prison Rules. Programmes for officials working with minors and women, continuing training and career development training contained modules on legislation, security and service policies, cultural diversity and the prevention of discrimination, professional ethics and communication, and conflict management.

10. Pursuant to Act No. 108/2015 on the State Police, all officers were given mandatory annual training on the protection of the fundamental rights of persons deprived of their liberty, including the right to be represented by a lawyer of their choice. Since 2015, 55 training workshops had been held with the participation of 891 State Police officers.

11. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that the Committee would appreciate additional information on the progress made towards establishing the Disappeared Persons Section within the Institute for Integration of Former Politically

Persecuted. He commended the State party for having adopted legislation that reflected its obligation not to return, extradite or expel from its territory asylum seekers from countries where there were grounds for believing that such persons would be in danger of being subjected to enforced disappearance; it would be useful to learn more about the application of such legislation and whether any good practices had been identified thus far. It would also be interesting to hear whether it was possible to appeal a decision on expulsion, return, surrender or extradition and, if so, whether such appeals had suspensive effect.

12. He would be grateful for detailed information on the provision of legal assistance, including free legal assistance for persons with few or no resources of their own. Statistics on any claims of unlawful detention that had been brought before the courts, together with the decisions handed down and any reparations provided, would also be appreciated.

13. **Mr. Decaux** (Country Rapporteur) said that the Committee remained concerned at the lack of a definition of the term "victim" in the State party's legislation. Such a definition would allow disappeared persons and others who had suffered harm as the direct result of an enforced disappearance to invoke their rights under the Convention and domestic law. He further noted that there was no victims' association in Albania and drew attention to article 24 (7), on the right to form and participate freely in such associations, which helped to combat impunity. The State party's replies to the Committee's question in paragraph 23 of the list of issues were somewhat narrow, insofar as they focused on compensation, whereas article 24 (5) of the Convention set out a broad range of types of reparation, in line with General Assembly resolution 60/147. Such other forms of reparation went beyond compensation and were beneficial to society as a whole. It would be interesting to learn whether other forms of reparation were reflected in the State party's law and practice.

14. Noting that the State party's replies to the Committee's question in paragraph 24 of the list of issues referred mainly to social protection measures, he said that the Committee would like to know more specifically about the legal and technical measures taken to search for and identify child victims, including through the use of a DNA database.

The meeting was suspended at 11 a.m. and resumed at 11.20 a.m.

15. **Ms. Peçi** (Albania) said that the Disappeared Persons Section had been established within the Institute for Integration of Former Politically Persecuted by an order of the Prime Minister issued in October 2014; it was now operational and reported to the Ministry of Health and Social Protection. Its objectives were those set out in paragraph 41 of the initial report (CED/C/ALB/1).

16. The aim of the draft cooperation agreement between the Albanian Government and the International Commission on Missing Persons was to protect the rights of family members of persons who had disappeared during the communist period in Albania. It was a comprehensive agreement that focused on the search for and collection of information on missing and disappeared persons, including through the use of a DNA database. The Government hoped to adopt the agreement shortly.

17. **Ms. Imeraj** (Albania) said that her Government, after ratifying the Convention, had introduced necessary amendments to its domestic law. It had then created specific sections within institutions relevant to the Convention and had provided theoretical and practical training to all the officials of those institutions in order to ensure that the Convention and related laws were properly understood and applied.

18. Under the Code of Criminal Procedure, any person arrested or detained was entitled, from the moment of arrest or detention, to hire the lawyer of her or his choosing or to be provided with one free of charge if she or he had insufficient resources. In the latter situation, a lawyer was chosen from an official list provided by the Albanian Chamber of Lawyers to all competent institutions. The Constitution, the Code of Criminal Procedure and the 2014 State Police Act together defined the rights of persons deprived of their liberty. In 2017, several legislative amendments had been adopted concerning the rights of persons arrested or detained, including the right of immediate access to a lawyer.

19. The absence of a specific definition of the term "victim" in the criminal legislation of Albania had not prevented the authorities from effectively supporting the rights of

victims. In 2017 the Code of Criminal Procedure had been amended to include a detailed description of victims' rights.

20. **Mr. Dervishaj** (Albania) said that since his Government's ratification of the Convention, there had been no cases of enforced disappearance of children; therefore, no national DNA database had been created within the State Police forensic institution. However, should cases arise in the future, Albania had the legal framework and technical capacity to carry out the necessary research and analysis of related data.

21. **Mr. Decaux** said that he was grateful for the information on the recent amendments to the Code of Criminal Procedure intended to guarantee victims' rights. It would be helpful if the delegation could submit a copy of the relevant provisions to the Committee for closer examination.

22. **Mr. Figallo Rivadeneyra** asked whether, as part of its efforts to deal with the legacy of the communist regime, the State party planned to use recently declassified information to establish the extent of the involvement of members of the security forces in cases of enforced disappearance and to launch criminal investigations, where applicable. He said that he also wished to know whether the State party intended to use that information to bring perpetrators of crimes against humanity to justice, even though such crimes were time-barred. The delegation could submit information in writing within 48 hours if required.

23. **Mr. Teraya** asked whether the delegation considered the definition of a victim under Albanian law to be broader or narrower than the one contained in article 24 (1) of the Convention. He said it was regrettable that the provisions of article 58 of the Code of Criminal Procedure, relating to the right of victims to receive compensation, appeared not to include the other forms of reparation mentioned in article 24 (5) of the Convention, namely restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition. He asked whether that was indeed the case and, if so, when the State party planned to correct that omission.

24. **Ms. Dralo** (Albania) said that any information that the delegation could not provide immediately could be submitted in writing, along with the statistical data already requested, within 48 hours.

25. **Ms. Imeraj** (Albania) said that the amended Code of Criminal Procedure listed the rights of victims and, in a departure from past practice, accorded victims or a member of their family the right to appoint a lawyer of their choosing to assist them during legal proceedings. If a victim lacked the financial resources to retain the services of a lawyer, the competent authorities could appoint one on his or her behalf. She considered that the existing practice, under which any person who had been harmed, injured or killed as a result of a crime, accident or other event or action was regarded as a victim, was in conformity with the definition of "victim" contained in article 24 (1) of the Convention.

26. **Ms. Peçi** (Albania) said that article 58 of the Code of Criminal Procedure, which had been amended in 2017, now included a number of the elements set out in article 24 (5) of the Convention. A comparative analysis of the provisions of article 58 of the Code of Criminal Procedure and article 24 (5) of the Convention could be submitted in writing. State prosecutors had a clear understanding of the meaning of the term "victim" and routinely applied it in their work.

27. Although no cases of enforced disappearance involving children had been recorded to date, the police were seized of a number of cases involving missing children. To facilitate the management of those cases, the police had created a database containing information on missing persons and on violations of the right to life. The delegation would welcome any suggestions and recommendations from the Committee on case management and on protocols for dealing with future cases of enforced disappearance involving children.

28. **Mr. Decaux**, supported by **Mr. Figallo Rivadeneyra**, thanked the delegation for the fruitful dialogue and said that it had proved useful in identifying new ways for the State party and the Committee to work together to achieve the full implementation of the

Convention. The Committee was particularly grateful for the additional information provided throughout the dialogue, including the information submitted overnight.

29. He recalled that the Convention, in addition to providing a general framework for the protection of persons from enforced disappearance, set out preventive measures for the future, tangible guarantees for the present and principles for dealing with the past. For each State party, the decision to ratify the Convention was but the starting point for its implementation. The transposition of the Convention into domestic criminal law was essential for facilitating international cooperation and establishing universal jurisdiction over offences of enforced disappearance.

30. The Committee was pleased to learn that the State party had received a visit from the Working Group on Enforced or Involuntary Disappearances and trusted that it would take the Working Group's conclusions and recommendations into account. The Committee also welcomed the drawing up of a draft agreement between Albania and the International Commission on Missing Persons.

31. Going forward, the State party should strengthen its legal framework for preventing and combating enforced disappearance by adopting measures to, inter alia, investigate offences committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring them to justice; address trafficking in persons, including minors; and hold criminally responsible any superiors who failed to prevent or were complicit in the commission of offences of enforced disappearance. The State party should also publicize the content of article 6 (2), which provided that no order or instruction from any public authority, civilian, military or other, could be invoked to justify such an offence. The Committee's substantive statement of February 2016 on enforced disappearance and military jurisdiction was also relevant in that regard. The State party should likewise consider establishing enforced disappearance as a continuous crime, abolishing the applicable statute of limitations, and should establish a definition of "victim" that was fully in line with the one contained in article 24 of the Convention.

32. The State party should do more to increase the participation of competent national institutions, civil society and NGOs in activities related to the implementation of the Convention and to guarantee the right to form and participate freely in associations for victims and human rights defenders. It should likewise continue its efforts to train civil servants, law enforcement officers, members of the judiciary and military personnel on the issues related to the Convention. The Committee would appreciate receiving the additional information requested within 48 hours so that it could be reflected in the Committee's concluding observations, which should then be disseminated widely in order to raise public awareness of the Convention and the work of the Committee.

33. **Ms. Dralo** (Albania) thanked the Committee for the productive dialogue and said that the delegation would endeavour to submit all the additional information requested within 48 hours. The suggestions and recommendations made by the members of the Committee throughout the interactive dialogue would be of great assistance to the various line ministries and institutions involved in implementing the Convention. As a candidate for accession to the European Union, Albania remained committed to promoting and protecting human rights and would intensify its efforts with a view to meeting all of its international obligations under the Convention.

The meeting rose at 12.15 p.m.